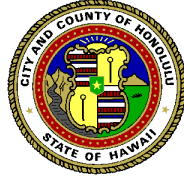


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: February 11, 2016
Standard Financial Plaza
Conference Room, Suite 211

Present: Hon. Victoria Marks (ret.), Chair
Michael Lilly, Esq., Vice Chair
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Hon. Riki Amano (ret.), Commissioner
Hon. Allene Suemori (ret.), Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
William Shanafelt, Investigator III
Duane W.H. Pang, Deputy Corporation Counsel, Department of the
Corporation Counsel (COR)
Ernest Nomura, Deputy Corporation Counsel, Department of the
Corporation Counsel (COR)

Absent: Laurie A. Wong, Associate Legal Counsel (ALC)
Lisa P. Parker, Legal Clerk III

Stenographer: Kristine Bigornia, Legal Clerk I

MINUTES OF THE FEBRUARY 11, 2016 OPEN SESSION MEETING

I. CALL TO ORDER

The Ethics Commission members received a copy of the Open Session Memo, dated February 8, 2016. Chair Marks called the meeting to order at 11:00 a.m.

II. NEW BUSINESS

Chair Marks announced that the meeting was not a regular meeting.

- A. For Discussion and Action: Modification of Personnel Evaluation Form for Executive Director and Legal Counsel.

Chair Marks started discussing Vice Chair Lilly's evaluation form from the U.S.S Missouri in an excel worksheet. She also mentioned she forwarded emails to the Commission from the EDLC to gather evaluation forms from the Police, Fire, and Liquor Commissions, and to also establish a Permitted Intermitted Group ("P.I.G.").

Chair Marks asked the Commission if they wanted to discuss or make a motion.

For discussion, Vice Chair Lilly stated he does not think the current system was broken, but not user-friendly. He explained the form should have a numerical grade and input from all the Commissioners on different categories of what the EDLC is being evaluated on in excel. Under each Commissioner's name on the excel worksheet, will be giving a grade and would be able to discuss on the different items. Then, the excel worksheet will be forwarded to the Chair to summarize in one evaluation report. Vice Chair Lilly continued to explain that the evaluation on excel can keep the prior year's evaluation.

Chair Marks stated the issue would be the items on the evaluation. She continued having it on excel would be a good idea, but would also like to see what the other Commissions in the county does their evaluation.

Vice Chair Lilly sent the U.S.S Missouri excel evaluation to the EDLC to modify as appropriate. The EDLC stated that he removed what was not necessary for his evaluation, which was not very much because of duplication. The EDLC stated he didn't really change things very much. It was more to separate the appropriate categories, and certainly if the Commission has other potential factors that they want to look at. Another thing was if the items should all weigh the same rate or not. The EDLC concluded if the Commission wanted Staff to retrieve the Police, Fire, and Liquor Commissions evaluations, he will request a blank copy from each of the Commission for their review.

Vice Chair Lilly stated that the Commission does not need a P.I.G., only to review it.

The EDLC informed the Commission that Staff was working on gathering the materials for the February 17, 2016 Ethics Commission meeting, but will try to get them to the Commission by then.

Chair Marks asked the Commission if this was agreeable. The Commission confirmed.

Commissioner Amano asked if the Commission can include Staff's input, to have them review the instrument as well, by going forward. Vice Chair Lilly asked on the form. She answered yes since "we're doing it all the way," and that the Staff can contribute because they have different insights.

Vice Chair Lilly stated that this form is for the Commission to evaluate the EDLC, and the EDLC evaluates the Staff.

Commissioner Amano suggested, by going forward, the EDLC will be evaluated by Commission and Staff. Chair Marks agreed that Staff should have some input. Commissioner Amano stated that its common in this kind of organization, all the stakeholders get to give their input in some committee or person, and then delivers the message.

Chair Marks added that if the Commission was changing the forms for the EDLC, then maybe evaluation forms for Staff should be considered.

The EDLC stated the Commission can do that, but Staff is partial Union. If the Commission will be evaluating the Staff, they must comply with what the Union requires, which was really simplistic. The EDLC gave an example that the Union only allows to answer “satisfactory” or “unsatisfactory,” nothing “above satisfactory.”

Chair Marks asked if the EDLC was using a form from the City. The EDLC answered yes, except for the ALC. The ALC’s evaluation form came from COR for the Deputies, and then adapt to what the Ethics Commission’s requirements.

Chair Marks stated that the Commission should look at all of them.

Commissioner Yuen stated that it is a good idea, but the evaluation from the EDLC to the Staff needs to be modified to reflect the different type of work. Chair Marks agreed.

Chair Marks stated if they are stuck with what DHR provides, then that’s what it is, but if anything else, that might be Legal Clerks Parker and Bigornia and Investigator Shanafelt.

Commissioner Silva asked if the Commission will be evaluating the Staff. Chair Marks answered no, just reviewing the forms.

The EDLC stated tried to get the flesh out, for a better evaluation is to include things, such as allowing to explain, and that takes care of most of the things that you normally feel you could talk about.

Commissioner Yuen asked the EDLC if other commissions have Staff provide their input. The EDLC answered he does not know. He explained with the Police Commission (“PC”), their Charter is a little different with a specific duty described in the Charter. He knew reviewing the form there is no 360, unless the PC wants to hear from Staff. The EDLC informed the Commission that he can find out. Commissioner Yuen stated that it might be a factor of why they are not doing that, and there is a reason why.

Chair Marks stated that it is worthwhile to review other Commissions’ evaluation forms. She instructed the EDLC to include this item to the February 17, 2016 agenda, going forward. The EDLC informed the Commission, that Staff has already submitted the agenda for filing, but it can be included to the agenda “EDLC’s evaluation.”

Deputy Pang stated that the Commission has to announce this as a continuation of this matter, and it does not technically need to be on the agenda for the next meeting.

Chair Marks announced that the Commission will continue discussion on the EDLC's evaluation in the February 17, 2016 meeting at 11:30 a.m.

Chair Marks announced to the Commission that she will not be present for the February 17, 2016 meeting, and Vice Chair Lilly will conduct the meeting.

At 11:13 a.m., Commissioner Silva moved to exit Open Session and enter Executive Session. Commissioner Yuen seconded the motion. All were in favor, and the motion carried unanimously.

Chair Marks asked everyone, but Counsel to the Commission, to leave the conference room.

III. EXECUTIVE SESSION SUMMARY (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; or HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.)

Commissioner Suemori moved to exit executive session and enter open session. Commissioner Silva seconded the motion. All were in favor, and the motion carried unanimously.

Chair Marks announced fifteen minutes before executive session ended, Vice Chair Lilly and Commissioner Yuen left the meeting.

Chair Marks reported:

A. *Continued from the February 1, 2016 Meeting For Discussion Pursuant to HRS Sec. 92-5(a)(2) and (a)(4) Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee, and to Consider the Independent Investigator Report of the Commission Office Conditions, Including Management, Personnel and Procedures.*

The Commission reached a unanimous decision, and a letter will be prepared to inform the necessary parties.

B. For Discussion: Pursuant to HRS Sec. 92-5(a)(4) Issues raised in the Memorandum dated January 8, 2016 to Charles Totto, Executive Director and Legal Counsel, Honolulu Ethics Commission from Deputy Corporation Counsel Duane W.H. Pang, Department of the Corporation Counsel.

No decision had been made.

- C. For Discussion: Pursuant to HRS Sec. 92-5(a)(2), Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to provide the status regarding the retention of an independent ethics investigator required due to a conflict of interest.

There were three proposals. A P.I.G. had been established consisting of Vice Chair Lilly and Commissioner Amano, and that they would be meeting with the Managing Director next week to move forward.

Commissioner Suemori moved to approve the February 1, 2016 executive session minutes. Commissioner Silva seconded. All were in favor, and the motion passed unanimously.

IV. ADJOURNMENT

Commissioner Suemori moved to adjourn the meeting. Commissioner Silva seconded. All were in favor, and the motion passed unanimously.

The meeting adjourned at approximately 1:14 p.m.